

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b))

Description of the Case.

Writ Petition No. 4209 (S/S) 2001

Diwani Ram. ... Petitioner

Vs.

Commissioner, Kumoun Division, Nainital
and two others ... Respondents

Approved for reporting.

Not approved for reporting

Date of Decision 20th October 2005.

Initial of Judge.

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 4209 (S/S) 2001

Diwani Ram, Patwari,
Circle Karn Karayal,
Tehsil-Champawat,
District Champawat.

----Petitioner.

Vs.

1. Commissioner, Kumoun Division, Nainital,
2. District Magistrate, Pithoragarh,
3. State of Uttaranchal through
Secretary, Ministry of Revenue,
Dehradun

----Respondents.

Sri C.D. Bahuguna, learned counsel for the petitioner.
Learned Standing Counsel for respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri C.D. Bahuguna, learned counsel for the petitioner and learned Standing Counsel for the State/ respondents.

By means of this writ petition, the petitioner has prayed to issue a writ, order or direction in the nature of certiorari quashing of order dated 19.04.1995. passed by District Magistrate, Pithoragarh, contained in annexure no. 6 to the writ petition, and for quashing of order dated 29.03.2001 passed by Commissioner, Kumoun Division, Nainital, contained in annexure no. 12 to the writ petition.

Brief facts of the case are that on 14.08.1993, one Madan Lal Sah who was a tenant in a premises situated at village Pati, died and a first information report about the sudden death of Sri Madan Lal Sah was given to Sri Ram Prasad, the Patwari of the concerned circle. The matter was investigated by the said Patwari and in the investigation he took assistance of the petitioner who at that time was the Patwari in the Rithakhal

circle. It is alleged that there was a complaint that from the suitcase of the deceased Madan Lal Sah a sum of Rs. 27,150/- were recovered but instead of depositing the sum so recovered, the Patwari Sri Ram Prasad distributed the same amongst his colleagues consequently, holding the petitioner responsible for the irregularities, he was suspended by the District Magistrate, Pithoragarh vide its order dated 21.10.1993. The suspension order was served on the petitioner on 05.11.1993. A disciplinary proceeding was initiated against the petitioner. The Tehsildar, Champawat was appointed as Inquiry Officer, who after recording the statements of the witnesses in the inquiry and after concluding the inquiry, submitted its report to the District Magistrate, Pithoragarh by which the petitioner was exonerated from the charges leveled against him. The District Magistrate, Pithoragarh on 20.12.1994, disagreeing with the inquiry report submitted by the Inquiry Officer, has issued a notice to the petitioner holding that the petitioner is guilty of the charges leveled against him.

It was contended that while disagreeing with the report of Inquiry Officer, the District Magistrate has not recorded any reasons in the notice dated 20th December 1994 for disagreeing with the report of the Inquiry Officer. The District Magistrate in its notice has stated as under:-

“ मै, जाँच अधिकारी द्वारा आपके स्पष्टीकरण एवं अन्य अभिलेखीय साक्ष्यों का परीक्षण करने के उपरांत जाँच अधिकारी की जाँच आख्या से सहमत नहीं हूँ। आप पर लगाये गये दोनो आरोप सिद्ध पाये गये।”

Perusal of the aforesaid statement illustrate that no reasons have been recorded by the District Magistrate for his disagreement with the inquiry report and further no opportunity of hearing was afforded to the petitioner before

forming final opinion about proving of the charges leveled against the petitioner. After issuing the notice aforesaid, the District Magistrate vide order dated April 19,1995 has passed punishment order removing the petitioner from his services. Against the removal order, the petitioner preferred appeal before the Commissioner. In the appeal, the Commissioner, on 30th January 1996 has modified the punishment order passed by the District Magistrate. The Commissioner has reduced the punishment and reinstated the petitioner in the service treating the period under suspension without pay. The order in the appeal was to the following effect:-

1. Censure award may be issued against the petitioner,
2. He may be placed at the initial stage in the pay-scale of one level lower grade and two increments may also be stopped.

Thereafter, the District Magistrate, Pithoragarh has passed order on 26th July 1996. Aggrieved with the order of the District Magistrate dated 26th July 1996, the petitioner made representation to the Commissioner, which was rejected by him by its order dated 29th March 2001, which is also under challenge in the writ petition.

The respondents have filed counter affidavit.

Learned counsel for the petitioner has assailed the impugned order on the following grounds:-

- (i) That the District Magistrate, has not recorded any reasons in the show cause notice of his disagreement on the findings of the Inquiry Officer by which the petitioner has been exonerated from the charges.

(ii) The District Magistrate has formed final opinion holding that the charges are proved against the petitioner but the opinion has been expressed without affording proper opportunity of hearing to the petitioner.

In support of his arguments, the petitioner has placed reliance on the Proviso of Rule 55A of Civil Services (Classifications, Control and Appeal) Rules 1930 as applicable in Uttar Pradesh. The Proviso provides as under:-

“provided that if for sufficient reasons, the punishing authority disagrees with any part or whole of the report of the Inquiry Officer above mentioned, the point or points of such disagreement, together with a brief statement of the grounds thereof, shall also be communicated to the Govt. Servant charged.”

Submission of the learned counsel for the petitioner is that the inquiry Officer exonerated the delinquent but the Disciplinary Authority disagrees and comes to its contrary findings. The Disciplinary Authority instead of forming tentative opinion had come to a final conclusion that the charges against delinquent were established. The Disciplinary Authority was not right in coming to the conclusion without affording any opportunity to the petitioner.

Learned Standing Counsel has submitted that the petitioner was given opportunity by issuing the show cause notice. Learned Counsel for the petitioner has submitted that mere issuance of show cause notice would not fulfill the purpose. In support of his submission, learned counsel for the petitioner has placed reliance on the judgement of Apex Court reported in Judgement Today 1999 (7) SC 62 Yoginath D. Bagde Vs. State of Maharastra wherein the Apex Court has held that it is open to the Disciplinary Authority either to agree or

disagree with the findings recorded by the Inquiry Authority. If it does not agree with the findings of the Inquiry Authority, it may record its own finding. The Apex Court in para 28 of the said judgment has held as under:

“Difficulties have arisen in all those case in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, on its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the inquiring authority that the charges were established, “an opportunity of hearing” may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority’s report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be ‘not guilty’ by the Inquiring Authority, is found guilty without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding “not guilty” has already been recorded”

In para 33 of the aforesaid judgment it is further held as under:

“A delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Inquiry Officer into the charges leveled against him but also at the stage at which those findings are considered by the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Inquiry Officer. If the findings recorded by the Inquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent

employee before reserving those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Inquiry Officer. This is in consonance with the requirement of Article 311 (2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in the rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the inquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the inquiry proceedings. The inquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that even punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution"

Applying the aforesaid principles laid down by the Apex Court, before coming to the conclusion that an opportunity of hearing must be provided to the delinquent and merely issuing show cause notice, after coming to the conclusion for dismissal, would not serve the purpose of natural justice. At least an opportunity of hearing to the delinquent must be provided before recording the findings by the Disciplinary Authority that the findings recorded by the Inquiry Officer were not just and proper.

In the present case though, a show notice was issued to the petitioner but that was just like a formality. Instead of forming tentative opinion, the Punishing Authority has formed final opinion and that too without giving any opportunity of hearing to the petitioner and, as such, there was clear violation

of principle of natural justice. Further no reasons have been recorded by the Punishing Authority for disagreement with the finding of the Inquiry Officer.

For the reasons recorded above, the writ petition is allowed. The impugned order dated 19.04.1995 passed by the District Magistrate, Pithoragarh and the order dated 29.09.2001 passed by the Commissioner, Kumoun Division, Nainital, are quashed. The petitioner shall be entitled for all consequential benefits from the date of his suspension including the arrears of salary. No order as to costs.

(M.M. Ghildiya, J.)

October 20, 2005:

NCM: